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No. 90-1390
SUPREME COURT
OF THE UNITED STATES
October Term, 1990

GENERAL MOTORS CORPORATION,
Petitioner,

v

EVERT ROMEIN and MICHIGAN
ATTORNEY GENERAL FRANK J. KELLEY,
Respondents.

FORD MOTOR COMPANY,
Petitioner,

v

ARTURO GONZALEZ and MICHIGAN
ATTORNEY GENERAL FRANK J. KELLEY,
Respondents.

On Petition for a Writ of Certiorari
to the Supreme Court of Michigan

BRIEF FOR RESPONDENT MICHIGAN ATTORNEY GENERAL IN OPPOSITION

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QUESTIONS PRESENTED

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WHETHER A 1987 MICHIGAN STATUTE RETROACTIVELY RESTORING THE LEVEL OF WORKERS' COMPENSATION BENEFITS DUE AND PAYABLE PRIOR TO THE AMENDMENT VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

II

WHETHER A 1987 MICHIGAN STATUTE RETROACTIVELY RESTORING THE LEVEL OF WORKERS' COMPENSATION BENEFITS DUE AND PAYABLE PRIOR TO THE AMENDMENT VIOLATES THE IMPAIRMENT OF CONTRACTS CLAUSE (ART I, § 10) OF THE UNITED STATES CONSTITUTION.

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STATEMENT OF THE CASE

Respondent Michigan Attorney General agrees with and adopts the "Counterstatement of the Case" contained in the Brief in Opposition to the Petition filed by Respondents Romein and Gonzalez, but wishes to emphasize the following points:

1. Michigan law did not permit "coordination" of employer-provided benefits (i.e., reduction of workers' compensation benefits) prior to a package of statutory changes in 1980-1981.

2. Those amendments prospectively increased the employer-financed workers' compensation benefit rates for workers injured after January 1, 1982, but did not increase the employer-financed workers' compensation benefits payable to workers injured before January 1, 1982, although there was some state-financed

increase. Effective March 31, 1982, the amendments permitted employers to reduce the amounts paid as workers' compensation benefits to take account of other employer-financed benefits (i.e., permitted "coordination" of benefits).

3. Although the statute was silent on the question, a few employers--notably Petitioners General Motors and Ford--applied the "coordination" provision to workers injured prior to 1982 as well as to workers injured after 1982. Petitioners did so at their peril, knowing full well that such action was hotly contested. Petitioners' interpretation of retroactive application was disputed by a non-binding resolution of the Michigan legislature in 1982 and was rejected in administrative hearings and

by the Michigan Court of Appeals, Franks v White Pine Copper Div., 122 Mich App 177 (1982). Not until October 7, 1985, was Petitioners' position upheld, Franks v White Pine Copper Div., 422 Mich 636 (1985), reh den 424 Mich 1202 (1985). In companion litigation which was consolidated in the Michigan Supreme Court's decision in Franks, workers injured before 1982 argued that to apply the "coordination" provisions retroactively to them would violate the Due Process Clause and the Contracts Clause of the United States Constitution. Interestingly, Petitioner General Motors took a position diametrically opposed to their position in the instant case and argued that there was no constitutional violation.

4. Effective May 14, 1987, the Michigan legislature enacted the statute at issue in the instant case which prohibits "coordination" of benefits for injuries occurring prior to March 31, 1982, and which required refunds if "coordination" deductions had been made.

REASONS FOR DENYING THE WRIT

The constitutional principles which govern this case are clear. The frameworks for analysis of Petitioners' Due Process Clause and Contracts Clause claims have been fully and carefully explicated in consistent decisions by this Court and were correctly applied by the Michigan Supreme Court. Petitioners' assertions of confusion and conflict are overstated, and there is nothing about this case which calls for re-examination of those principles by this Court.

THE 1987 MICHIGAN STATUTE RETROACTIVELY RESTORING THE LEVEL OF WORKERS' COMPENSATION BENEFITS DOES NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The standards to be used in evaluating a due process challenge to retro-

active legislation have been clearly enunciated in several decisions of this Court, particularly in Usery v Turner Elkhorn Mining Co, 428 US 1 (1976), and Pension Benefit Guaranty Corp v Gray and Co, 467 US 717 (1984). In Usery, supra, 428 US at 15-17, the Court said:

> "It is by now well established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way. ***
>
> " *** But our cases are clear that legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations. *** This is true even though the effect of the legislation is to impose a new duty or liability based on past acts. ***
>
> "It does not follow however that what Congress can legislate prospectively it can legislate retrospectively.
>
> "The retrospective aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former."

In Pension Benefit Guaranty Corp, supra, 467 US at 728-730, the Court quoted with approval from Usery and went on to say, "But that burden [of justifying retroactive legislation] is met simply by showing that the retroactive application of the legislation is itself justified by a rational legislative purpose."

Petitioners' allegation, Petition page 24, that the Michigan Supreme Court's decision imposes "five years of retroactive monetary liability" significantly overstates the facts. It must be recalled that although Petitioners unilaterally chose to impose retroactive

"coordination" of workers' compensation benefits in 1982, they did so at their peril and their interpretation of the statute was uniformly rejected by administrative tribunals and the Michigan courts until December 30, 1985, when the Michigan Supreme Court decision in Franks, supra, and its companion cases became final after rehearing was denied. Respondent Attorney General submits, therefore, that the period of retroactive application should more appropriately be viewed at most as approximately one and one-half years: The period from the date the Michigan Supreme Court decisions in Franks became final (December 7, 1985) until the effective date of the challenged statute (May 14, 1987), during which time legislative efforts were pending to address the consequences of the

Franks decision. The outcome of the instant case is heavily dependent upon its own unique facts and, contrary to the statement on page 29 of the Petition, there is simply nothing in the Michigan Supreme Court's decision which indicates any "endorsement of open-ended retroactive liability."

Despite Petitioners' contention that the Michigan Supreme Court engaged in only "the most minimal scrutiny", Petition, page 24, it is clear from the decision that the Michigan Supreme Court did in fact carefully follow the principles of Usery and Pension Benefit Guaranty Corp in evaluating Petitioners' due process claim. Petitioners' reliance on Railroad Retirement Board v Alton R Co, 295 US 330 (1935), is misplaced.

Even assuming that Alton retains vitality ("despite the changes in judicial review of economic legislation that have occurred in the ensuing years", Pension Benefit Guaranty Corp, supra, 467 US at 733), it is clearly distinguishable. Just as this Court said that Alton did not control in the context of black lung benefit provisions in Usery, so, too, in the instant case, the Michigan workers' compensation benefits are not intended to meet an employee's "generalized need for funds", but instead are "to satisfy a specific need created by the dangerous conditions under which the former employee labored--to allocate to the [employer] an actual, measurable cost of his business." Usery, supra, 428 US at 19.

Contrary to the suggestion on pages 26-28 of the Petition, there is nothing in this Court's decision in Pension Benefit Guaranty Corp which suggests a retreat from the principles of Usery. Because the appropriate legal analysis employs terms such as "arbitrary" and "rational", it is true that this Court's decisions have not set forth a "black letter" rule describing with specificity the outermost reaches of constitutionality. Nevertheless, despite the fact that there is some necessary flexibility in the standard, Petitioners are simply wrong when they assert that this Court's opinions have resulted in "vagueness and confusion" which has left the lower courts "without meaningful guidance." Furthermore, examination of the Michigan Supreme Court's opinion

clearly reveals that the court did consider "other equitable factors", Petition page 26, such as reliance on prior law and the question whether Petitioners had any vested rights. The Michigan Supreme Court correctly concluded, on the unique facts of the instant case, that Petitioners did not justifiably rely on prior law and that the statute did not violate any vested rights.

THE 1987 MICHIGAN STATUTE RETROACTIVELY RESTORING THE LEVEL OF BENEFITS DUE AND PAYABLE PRIOR TO THE AMENDMENT DOES NOT VIOLATE THE IMPAIRMENT OF CONTRACTS CLAUSE (ART I, § 10) OF THE UNITED STATES CONSTITUTION.

The Michigan Supreme Court correctly held that Michigan law clearly provides that employers such as Petitioners cannot rely on the level of benefits existing at the time of an injury as a legitimate

contractual expectation. App. to Petition 14a. Because there is no contract, Michigan's workers' compensation statutes do not create rights protected by the Contract Clause.

Petitioners assert, Petition pages 13-14, that state courts around the country have disagreed on the question whether the Contract Clause governs retroactive legislation in the workers' compensation area. Respondent Attorney General submits that this issue involves questions of state law, but to the extent that a question of federal law is present, Petitioners have not demonstrated that such a conflict, if it in fact exists, is intolerable. In Stern, Gressman & Shapiro, Supreme Court Practice, 6th Edition, § 4.4, p 200

(1986), the authors cite Justices Stevens and Marshall in discussing the policy of letting "tolerable conflicts go unaddressed" since such conflicts may play a constructive role in the lawmaking process by helping to illuminate issues and to examine the results of experimentation with substantive and procedural solutions to the problem. In the instant case, Petitioners cannot claim to have been harmed by the Michigan Supreme Court's conclusion that workers compensation matters are not subject to the Contract Clause, because the court went on to evaluate, and reject, their claims using the proper Contract Clause analysis. Furthermore, Respondent Attorney General submits that the instant case is not an appropriate one for the Court to utilize in resolving any

conflict, since it is tied so closely to its own unique facts, particularly the unique chronology of the various statutory enactments and state court decisions.

Respondent Attorney General submits that even if the Contract Clause applies in the instant case, there has been no violation. As the Michigan Supreme Court correctly recognized, App. to Petition 15a, the constitutional prohibition against impairing the obligation of contract must be "accommodated to the inherent police power of the State 'to safeguard the vital interest of its people.'" Energy Reserves Group, Inc v Kansas Power & Light Co, 459 US 400, 410 (1983). Even more explicitly, this Court in Exxon Corp v Eagerton, 462 US 176, 190-191 (1983), said:

"The Contract Clause does not deprive the States of their 'broad power to adopt general regulatory measures without being concerned that private contracts will be impaired, or even destroyed, as a result.' *** Thus, ... a workmens' compensation law may be applied to employers and employees operating under pre-existing contracts of employment that made no provision for work-related injuries, New York Central R Co v White, 243 US 188, 61 L Ed 667, 37 S Ct 247 (1917)."
(Citations and footnote omitted).

The Michigan Supreme Court evaluated Petitioners' Contract Clause claim using the balancing test which weighs the substantiality of the impairment, the legitimacy of the public purpose for the impairment and the reasonableness of the means chosen to serve that purpose. App. to Petition 15a-17a. Respondent Attorney General suggests that, in the unique circumstances of the instant case, the Michigan Supreme Court's evaluation of those factors was correct.

Although Petitioners apparently agree that the Michigan Supreme Court applied the correct balancing test (although they disagree with the court's resolution of their claims), Petitioners' principal Contract Clause argument in the instant case urges this Court to engage in a dramatic reevaluation of the fundamental meaning of the Contract Clause itself. They suggest that the Court's recent cases have resulted in a test which is unfaithful to the language and purpose of the Contract Clause and that the Court's decisions have somehow moved the Contract Clause from its "constitutional moorings." Respondent Attorney General submits that while it is true that interpretation of the Contract Clause has evolved over the decades since enactment of the Constitution, there is simply no

legitimate reason to retreat from current Contract Clause jurisprudence. Under the modern decisions, (i.e., since Home Building & Loan Assn v Blaisdell, 290 US 398 (1934)), although the language of the Contract Clause is facially absolute, "its prohibition must be accommodated to the inherent police power of the State 'to safeguard the vital interests of its people.'" Exxon Corp, supra, 462 US at 190 (unanimous decision), quoting Energy Reserves Group, Inc, supra, 459 US at 410, and Home Building & Loan Assn, supra, 290 US at 434. Respondent Attorney General submits that, particularly within the context of the unique facts of the instant case, this interpretation of the Contract Clause is appropriate.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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